

REMARKS

Claims 1-5 and 11 were pending in this application. All of the pending claims were rejected. Claims 1, 2, 4, 5, and 11 are currently amended. Claim 3 is now cancelled because the recited limitations are incorporated into claim 1 as amended. Reconsideration is requested.

Claims 1-5 and 11 are subject to objection based on reciting “program product” rather than “computer program product.” There is no basis in law for the objection. However, the claims are amended as suggested by the examiner in order to avoid further delay in moving this application toward issue.

Claims 1-5 and 11 are rejected under 35 U.S.C. 101 as including non-statutory subject matter. In particular, the examiner asserts that the computer-readable medium defined in the specification on page 96 includes a carrier wave. Applicant respectfully disagrees. The cited language actually states that the computer program “can be delivered” to a computer via carrier wave. Nevertheless, in order to avoid further delay in moving this application toward issue applicant hereby disclaims carrier waves from the scope of the claims until such time as carrier waves become statutory subject matter.

Claim 1 as currently amended recites the limitations from claim 3 (now cancelled). Since claim 3 was not rejected under 35 U.S.C. 102 or 103, the examiner implicitly indicated that the limitations of claim 3 include allowable subject matter. Applicant has reviewed Janevski and finds no suggestion that signal strength and technology type are used to obtain an indication of expected data rate of service by the alternative access point. Janevski appears to assume that a WLAN will provide a higher data rate than a cellular network. As such, Janevski is not configured to evaluate, for example, an IEEE 802.11a device versus and IEEE 802.11g device.

Applicant has made a diligent effort to place the claims in condition for allowance.

Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicants' Attorney at the number listed below so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

10/6/2008

Date

/Holmes W. Anderson/

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